

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
TROMPEX CORPORATION
File No. 0000096244

ORDER ON RECONSIDERATION

Adopted: March 5, 2003

Released: March 6, 2003

By the Deputy Chief, Policy & Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this action, we address a petition filed by Trompex Corporation ("Trompex") and Supra Telecommunications & Information Systems, Inc. ("Supra") requesting reconsideration of our decision that their actions following the 929 and 931 MHz Paging Auction, Auction No. 26 ("Auction No. 26") violated the Commission's rules. Specifically, we found Trompex disqualified to be a Commission licensee, and dismissed the long-form application filed by Supra, for the 929 MHz B block licenses in Markets 001-051 because the parties violated section 1.2105(b)(2) and (c)(2) of the Commission's rules. For the reasons set forth below, we uphold our actions in the Order and accordingly deny the petition for reconsideration.

II. BACKGROUND

2. In order to bid for licenses in a Commission auction, an interested party must timely file an application, known as a "short-form application," and submit an upfront payment to participate in the competitive bidding process. A short-form application must contain certain basic information, including the name, ownership, and control of the potential bidder as well as the real party in interest. A potential bidder may modify its short-form application to reflect, among other things, changes in ownership at any time before or during an auction, provided that such a change does not result in a change in control of the applicant. If the change in ownership does result in a change in control of the applicant, the modification is deemed a major amendment to the application, which is not allowed after the initial filing date, and the

1 Verified Petition for Reconsideration of Order No. DA 01-2480 Dismissing Long-Form Application and Imposing Default Penalties Upon Trompex's Up-Front Payment, filed by Trompex Corporation and Supra Telecommunications & Information Systems, Inc. on December 3, 2001 ("Petition"). See Trompex Corporation, Order, 16 FCC Rcd. 18874 (Policy & Rules Br., Comm. Wir. Div., WTB 2001) ("Order").

2 47 C.F.R. § 1.2105(b)(2), (c)(2). See Order, 16 FCC Rcd. at 18876-77, ¶¶ 7-9.

3 See 47 C.F.R. § 1.2105(a).

4 See 47 C.F.R. §§ 1.2105(a)(2), 1.2112.

5 See 47 C.F.R. § 1.1205(c)(2).

application will be dismissed.⁶ If, however, a potential bidder timely submits its short-form application and upfront payment, and otherwise meets the competitive bidding requirements, the Commission will release a public notice including that entity as one of the applicants qualified to bid in the auction.

3. At the close of an auction, if an entity is the winning bidder for a license, it then must submit a more detailed application, known as a “long-form application.”⁷ The Commission uses the information provided on the long-form application, together with information provided on the bidder’s short-form application, to determine if the winning bidder is qualified to hold the license(s) and, if applicable, whether it is eligible for a bidding credit. If a winning bidder fails to timely submit the required long-form application and does not establish good cause for any late-filed submission, it will be deemed to have defaulted and will be subject to default payments.⁸ Moreover, for auctions of paging geographic-area licenses, section 22.213 of the Commission’s rules states that the Commission “will not accept long-form applications for paging geographic area authorization from anyone other than the auction winners”⁹

4. From February 24 to March 2, 2000, the Commission conducted Auction No. 26 for geographic-area paging licenses in the 929-930 MHz (929 MHz) band and 931-932 MHz (931 MHz) band.¹⁰ Prior to the auction, Trompex timely submitted a short-form application and upfront payment to participate in Auction No. 26.¹¹ Based on its timely-filed short-form application and upfront payment, the Commission announced that Trompex was a qualified bidder that could participate in the auction.¹² At the close of the auction, the Commission released a public notice that announced, *inter alia*, that Trompex was the winning bidder for 51 929 MHz B block licenses in Markets MEA 001-051,¹³ and that all winning bidders in Auction No. 26 had to submit their long-form applications on or before March 20, 2000.¹⁴

5. Trompex never filed a long-form application. Instead, another entity, Supra, filed a long-form application requesting that the Commission grant it the 51 licenses for which Trompex was the winning bidder in the auction.¹⁵ Trompex’s short-form application made no mention of Supra. Supra’s

⁶ See 47 C.F.R. § 1.1205(b)(2).

⁷ See 47 C.F.R. § 1.2107(c). See also 47 C.F.R. § 22.213 (filing of long-form application following an auction for paging geographic area authorizations).

⁸ 47 C.F.R. § 1.1207(b). See also 47 C.F.R. § 1.1204(g) (procedures for calculating default penalties).

⁹ 47 C.F.R. § 22.213. Section 22.213 also provides that “parties seeking partitioned authorizations pursuant to agreements with auction winners under § 22.221 of [Part 22]” may file applications. *Id.* Section 22.221 sets forth the procedures for seeking a license partitioned from a paging authorization won at auction. 47 C.F.R. § 22.221. As discussed *infra* paragraph 11 and note 38, the partitioning provisions are not relevant to the instant matter.

¹⁰ While paging stations in the 929 MHz band are authorized under 47 C.F.R. Part 90, Subpart P, the exclusive channel 929 MHz licenses are subject to the application filing, licensing procedure, auction procedure, construction, operation and notification rules and requirements set forth in 47 C.F.R. Part 22, which includes the rules for paging stations in the 931 MHz band. See 47 C.F.R. § 90.493. Therefore, the applicable auction rules for Auction No. 26 are contained in 47 C.F.R. Parts 1 and 22.

¹¹ See FCC Form 175 filed by Trompex Corporation on January 19, 2000. See also Auction of 2,499 929 and 931 MHz Paging Licenses, *Public Notice*, 15 FCC Rcd. 2043, 2068 (2000).

¹² See Auction of 929 and 931 MHz Paging Licenses, *Public Notice*, 15 FCC Rcd. 2838, 2848, 2869 (2000).

¹³ See 929 and 931 MHz Paging Auction Closes, *Public Notice*, 15 FCC Rcd. 4858, 4867-69 (2000) (“Closing Public Notice”).

¹⁴ *Id.*, 15 FCC Rcd. at 4862, 4920.

¹⁵ See ULS File No. 0000096244 (“Supra Long-Form Application”). As noted in the Branch’s order, Supra did not file a short-form application or otherwise participate in Auction No. 26. *Order*, 16 FCC Rcd. at 18875, ¶ 2.

long-form application referenced Trompex at two points, when it listed Trompex's gross revenues along with its own,¹⁶ and when it stated, in one of the application's exhibits, that: "since the auction, Trompex Corporation has since [*sic*] designated Supra Telecommunications & Information Systems, Inc. as the real party in interest to continue with the licenses."¹⁷

6. On October 25, 2001, the Policy and Rules Branch of the Wireless Telecommunications Bureau's Commercial Wireless Division ("Branch") released an order addressing Trompex's qualification to acquire the 51 licenses for which it was the winning bidder in Auction No. 26 and Supra's long-form application for those licenses. Noting that Supra had not filed a short-form application to participate in Auction No. 26, we determined that Supra's use of Trompex's taxpayer identification number ("TIN")¹⁸ to file its long-form application, coupled with a change of name and ownership of the applicant for the 51 licenses, was evidence that an unauthorized transfer of control occurred after the short-form filing deadline.¹⁹ Because such a change in control is considered a "major amendment" to a short-form application made after the initial short-form filing deadline, we concluded that Trompex and Supra violated section 1.1205(b)(2) and (c)(2) of the Commission's rules.²⁰ Therefore, we found Trompex to be disqualified to acquire the 51 licenses for which it was the winning bidder in the auction²¹ and dismissed Supra's long-form application.²² On December 3, 2001, Trompex and Supra jointly filed a petition for reconsideration of our decision.²³

III. DISCUSSION

7. For the reasons set forth herein, we uphold both our decision that Trompex was disqualified to hold the licenses for which it was the winning bidder in Auction No. 26, and was therefore

¹⁶ Supra Long-Form Application, Exhibit C: Designated Entities.

¹⁷ Supra Long-Form Application, Exhibit D: Agreements & Other Instruments.

¹⁸ The Internal Revenue Service issues an entity's TIN. However, when an entity submits its IRS-issued TIN for identification purposes on Universal Licensing System ("ULS") filings, the system automatically converts the number into a "masked TIN" (*i.e.*, a different letter/number combination that is associated with the IRS-issued TIN) in order to keep the applicant's actual TIN confidential. *See* 47 C.F.R. § 1.923(h). For purposes of this *Order*, however, "TIN" will refer to the "masked TIN" of an entity.

¹⁹ *Order*, 16 FCC Rcd. at 18875, ¶ 4.

²⁰ *See* 47 C.F.R. § 1.1205(b)(2)-(c)(2).

²¹ In addition, because the Branch found Trompex disqualified, it deemed Trompex to be in default, pursuant to 47 C.F.R. § 1.2109(c), and set forth the initial default payment of \$26,343 for Trompex. *Order*, 16 FCC Rcd. at 18875-76, ¶¶ 5-6.

²² *Order*, 16 FCC Rcd. at 18875-77, ¶¶ 4, 9. The Branch noted that Supra stated that it was a wholly-owned subsidiary of Idowu, Inc., whose majority shareholder is Olukayode A. Ramos, a citizen of Nigeria. *Id.* at 18875, ¶ 2. Because the level of foreign ownership in Supra exceeded 25 percent, Supra was required to file a Petition for Declaratory Ruling for approval of its foreign ownership. *See* 47 U.S.C. § 310(b)(4). The Branch noted that Supra failed to make such a filing. *Order*, 16 FCC Rcd. at 18875 n.5.

²³ The Petition was officially filed with the Commission's Office of the Secretary on December 3, 2001, which fell beyond the 30-day filing period for petitions for reconsideration. *See* 47 C.F.R. § 1.106(f). During the 30-day period following the release date of the *Order*, however, the Commission amended its procedural rules on an emergency, interim basis to require the filing or refiling of certain Commission filings because of the disruption of deliveries due to emergency events in Washington, DC. *See* Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, FCC 01-345, 66 Fed. Reg. 62991 (Dec. 4, 2001). Because the petitioners followed the correct interim procedures, the Petition is considered timely filed as of the date the pleading was originally sent to the Commission, November 24, 2001. *See* Declaration of Mailing of Verified Petition for Reconsideration of Order No. DA 01-2480 Dismissing Long-Form Application and Imposing Default Penalties Upon Trompex's Up-Front Payment, filed by Mark E. Buechele, counsel for Trompex and Supra, on December 5, 2001.

in default, and our dismissal of Supra's long-form application. Trompex properly was deemed disqualified (and thus ineligible to acquire the licenses) and subject to default payments, because it failed to file a timely long-form application for the licenses won at auction, as required by section 1.2107(c) of the Commission's rules.²⁴ Supra's long-form application was properly dismissed because Supra was neither a winning bidder nor an applicant in Auction No. 26 and thus had no right under section 1.2107(c) to file a long-form application.²⁵ Supra's long-form application also was properly dismissed because Supra violated section 22.213 of the Commission's rules, which prohibits the filing of any long-form applications following a geographic-area paging auction by anyone that was not a winning bidder in the auction.²⁶

8. Trompex and Supra seek reconsideration of the Branch's decision on effectively two grounds. First, they argue that the Branch erroneously concluded that Supra and Trompex had the same TIN and that therefore an unauthorized transfer of control of Trompex occurred.²⁷ Second, the petitioners assert that Branch's actions in this case were unfair and lacking in due process because the Branch made its decision without seeking a clarification from the parties and/or allowing the parties an opportunity to correct any deficiencies in its filings.²⁸

9. We disagree with the petitioner's claim that the factual premise of our decision was "wholly erroneous."²⁹ The petitioners allege that the decision was premised on the fact that Supra "had provided as its TIN, the same TIN as Trompex, and thus a conclusion was drawn that [Supra] had take [*sic*] control of Trompex and thus Trompex has effectuated a 'major amendment' to its short-form application."³⁰ The *Order*, however, does not state that the parties had the same TIN, but instead correctly states that Supra used Trompex's TIN to submit the long-form application.³¹ Both a review of the long-form application and Commission records demonstrate that the *Order* was correct in that regard. On the long-form application, the field that asks for the applicant's TIN is filled in with "L00219635," which, according to Commission records, corresponds to the TIN on file for Trompex as well as the TIN used to file the long-form application on ULS.³² However, the field asking for the TIN of the "Real Party

²⁴ 47 C.F.R. § 1.2107(c).

²⁵ *See id.*

²⁶ 47 C.F.R. § 22.213. *See also* 47 C.F.R. § 1.2107(c) (stating that a winning bidder must file the long-form application for the licenses for which it was the winning bidder pursuant to the rules governing the service authorizing the licenses).

²⁷ Petition at 4.

²⁸ *Id.* at 4-5.

²⁹ *Id.* at 4.

³⁰ *Id.* Trompex and Supra maintain that the long-form application "clearly indicates a TIN for [Supra] with the last two digits ending in '54'; whereas the short-form application provides a TIN for Trompex which has the last two digits ending in '92'." *Id.*

³¹ *Order*, 16 FCC Rcd. at 18875, ¶ 4 ("the use of Trompex's TIN on the long-form application submitted by Supra").

³² *See* Supra Long-Form Application, Line 10a. As stated above, ULS automatically converts an entity's IRS-issued TIN into a "masked TIN" (*i.e.*, a different letter/number combination that is associated with the IRS-issued TIN) in order to keep the applicant's actual TIN confidential. *See supra* note 18. In order to file a long-form application following an auction, the winning bidder can make the filing (and access previously filed information) only by using the same TIN that it used in filing its short-form application. The Commission has, in some cases, allowed an applicant to "update" the number initially used on a short-form application – *e.g.*, if the potential bidder did not yet have the TIN provided by the IRS, it could use a temporary identification until its official TIN was available – but in such cases, the Commission required the applicant to amend its short-form with its actual TIN once it was issued by the IRS.

in Interest of the Applicant” is filled in with “L00220054,” which according to Commission records corresponds to the TIN on file for Supra.³³ Moreover, based on the Commission’s standard practice of importing the applicant’s name from the short-form application into the applicant’s name field on the long-form application, Supra must have actively replaced Trompex’s name with its own as the applicant for the 51 licenses for which Trompex was the winning bidder in the auction. Therefore, despite knowing that it was neither an applicant nor a winning bidder, Supra used the TIN of another entity that was an applicant and a winning bidder in an effort to circumvent procedures established in ULS and in the Commission’s rules.

10. The petitioners also assert that the Branch’s conclusion that an unauthorized transfer of control had occurred was “wholly erroneous and without factually [*sic*] basis.”³⁴ The petitioners state that the two corporations, Supra and Trompex, were formed and have always been and continue to be controlled by separate individuals, and that at no time has Supra held any ownership interest in Trompex.³⁵ Petitioners also declare that the only connection between the two entities was that the majority owners of each entity are acquainted and, following the end of Auction No. 26, informally agreed to “pursue the licenses under [Supra].”³⁶ However, it was reasonable to conclude that an unauthorized transfer of control occurred based on the information in Supra’s long-form application; in addition to the very fact that Supra filed a long-form application for the licenses for which Trompex was the winning bidder, Supra also used Trompex’s TIN to file the application and included Trompex’s gross revenues with its own gross revenues to determine eligibility for a very small business bidding credit.

11. Regardless of whether an unauthorized transfer of control did or did not occur, the fact remains that the petitioners attempted to evade Commission licensing and assignment requirements and thereby violated Commission rules, making Trompex disqualified to hold the licenses and mandating the dismissal of Supra’s long-form application. Specifically, by failing to file a long-form application for the licenses for which it was the winning bidder, Trompex violated section 1.2107(c) of the Commission’s rules, which holds that a winning bidder that fails to file a long-form application following the auction is deemed to have defaulted and, thus, is disqualified to hold the licenses and subject to default payments.³⁷ Because Supra was not the winning bidder for the licenses for which it filed a long-form application, it was not authorized under section 1.2107(c) to file the application. Supra’s long-form application also was properly dismissed because it violated section 22.213 of the Commission’s rules by filing a long-form application when it, by its own admission, was neither the winning bidder for the subject licenses nor a party to a permissible paging partitioning agreement that was disclosed on any short-form application filed by a qualified bidder.³⁸ Instead, Supra was seeking a wholesale substitution of one party for another – a clear violation of both sections 1.1207(c) and 22.213.

³³ Supra Long-Form Application, Line 15. The long-form application lists the name of the real party in interest of the applicant as Supra. *Id.* at Line 14.

³⁴ Petition at 4.

³⁵ *Id.* at 2.

³⁶ *Id.*

³⁷ 47 C.F.R. § 1.2107(c). As noted above, the rule requires that a winning bidder submit the long-form application within 10 business days after being notified that it was the winning bidder. *Id.* In this case, winning bidders in Auction No. 26 were notified by the *Closing Public Notice* – Attachment A of which expressly listed Trompex as one of the winning bidders – that they were required to submit their long-form applications on or before March 20, 2000. *See* 15 FCC Rcd. at 4862, 4867-69, 4920.

³⁸ 47 C.F.R. § 22.213. *See also* 47 C.F.R. § 1.2107(c). As noted above, *supra* note 9, the Commission, pursuant to 47 C.F.R. § 22.213, also will accept post-auction applications for geographic area paging licenses from parties that had previously disclosed agreements with auctions winners to partition licenses under 47 C.F.R. § 22.221. In this case, neither party raised an intent to partition, and even if that had been their intention, Trompex

(continued...)

12. Moreover, the petitioners' actions following Auction No. 26 violated the integrity of the competitive bidding, licensing, and assignment processes that the Commission established to effect proper, administratively-sound assignment of spectrum. When adopting the rules for competitive bidding, the Commission created a process in which potential bidders are allowed to make minor changes to the information provided at the pre-auction stage, but determined that major modifications, including ownership changes or changes in the identification of parties to bidding consortia, would not be allowed.³⁹ In addition to prohibiting major amendments, the Commission's rules require ownership and other interest disclosures, including the identities of other bidders,⁴⁰ to allow for transparency in the competitive bidding process. This transparency levels the playing-field among bidders, which is necessary because such information can affect the actions, strategies, and bids of other bidders.⁴¹

13. Allowing an entity to acquire licenses applied for, bid on, and won by another entity in a Commission auction would be contrary to the public interest because it could result in substantial injury to other bidders who based their bidding strategy on knowing those who they were competing against. If we were to allow an entity to submit an application for licenses bid on and won by another entity, such entities could gain an "unfair advantage over other bidders in the auction," and could even intentionally mislead other bidders.⁴² Moreover, it would undermine the enforcement of competitive bidding rules that are specifically designed to protect against gaming the auction system. An elementary concept in distributing licenses through a competitive bidding process is that licenses will be awarded to the winning bidder, which is considered to be the party that values them most highly. The strict enforcement of our rules in this regard ensures that the ultimate purpose of the auction, which is to encourage and facilitate the provision of reliable service to the public, is achieved. Further, the Commission's competitive bidding rules fulfill the broader purpose of Section 309(j) of the Communications Act of 1934, as amended,⁴³ which created an efficient mechanism to assign a scarce resource to its most productive use.⁴⁴

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and *Supra* failed to follow the proper procedures, which require that the potential bidder reflect that agreement in its short-form application and that both the winning bidder and the potential partitionee jointly file their long-form applications. *See* 47 C.F.R. § 22.221(a)–(b).

³⁹ *See* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd. 2348, 2377, ¶¶ 167-68 (1994) (allowing applicants to make minor amendments to their short-form applications before the auction).

⁴⁰ *See* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, 9 FCC Rcd. 7245, 7252, ¶¶ 40, 42 (1994) (“[c]oncealing bidder identities may give an advantage to larger bidders that have the resources to devote to discovering other bidders’ identities.”). Here, the Commission clearly elected to identify the bidders before and after Auction No. 26. *See* Auction of 929 and 931 MHz Paging Service Spectrum, *Public Notice*, 14 FCC Rcd. 18440, 18472 (“bidders will know in advance of this auction the identities of the bidders against which they are bidding.”). The Commission likewise made available to all Auction No. 26 bidders the ownership information provided in the short-form applications by other bidders before the auction. *Id.* at 18453.

⁴¹ *See* Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd. 12035 (1999) (“*Two Way Radio*”) (dismissing a request made by a winning bidder after the auction to change its bidding credit status).

⁴² *Two Way Radio*, 14 FCC Rcd. at 12043, ¶ 15.

⁴³ 47 U.S.C. § 309(j).

⁴⁴ *See* BDPCS, Inc., BTA Nos. B008, B036, B055, B110, B133, B149, B261, B298, B331, B347, B358, B391, B395, B407, B413, B447, Frequency Block C, *Memorandum Opinion and Order*, 15 FCC Rcd 17590, 17598, ¶ 14 (2000). As the House Committee on Energy and Commerce explained, “[a] carefully designed system to obtain competitive bids from competing qualified applicants can speed delivery of services, promote efficient and intensive use of the electromagnetic spectrum, prevent unjust enrichment, and produce revenues to compensate the public for the use of the public airwaves.” H.R. Rep. No. 103-111, at 253 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 580.

Therefore, we conclude that Supra's and Trompex's actions were not only contrary to the integrity of the auction process but also contrary to the public interest.

14. Finally, we deny the petitioners' argument that the Branch's actions were "unfair and lacking in due process."⁴⁵ The petitioners specifically object that the Commission's staff did not advise them of any further filings or information needed by the Commission and that the Branch made its decision "without seeking clarification from the parties involved."⁴⁶ We first note that there was nothing that the Commission staff could have told Trompex or Supra to do that would have remedied the errors made by both parties. The parties already had violated the Commission's auction and licensing rules and could not undo this with more filings. Second, the Commission is under no obligation to seek further clarification from the parties before making a decision based on the information submitted by the parties. In this case, the petitioners brought the decision upon themselves when they attempted to circumvent the normal Commission processes for licensing and assignment of wireless licenses. Both parties are deemed to be aware of the Commission's regulations and procedures, not only from the Commission's rules but also from the various public notices, the bidder information package, and other Commission documents released prior to the filing of the long-form applications. Therefore, we find no unfairness or lack of due process on the part of our decision to disqualify Trompex and dismiss Supra's long-form application.⁴⁷

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405(a), and sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Verified Petition for Reconsideration of Order No. DA 01-2480 Dismissing Long-Form Application and Imposing Default Penalties Upon Trompex's Up-Front Payment, filed by Trompex Corporation and Supra Telecommunications & Information Systems, Inc. on December 3, 2001, is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Ray
Deputy Chief, Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau

⁴⁵ Petition at 4.

⁴⁶ *Id.* at 4-5.

⁴⁷ We also note that petitioners assert that the Public Interest Statement provided by Supra in an exhibit to its long-form application was sufficient to meet the requirements for foreign ownership of radio licenses, pursuant to 47 U.S.C. § 310(b)(4). Because we uphold the dismissal of Supra's long-form application due to Supra's ineligibility to apply for grant of these licenses, we need not address petitioners' claim.